IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 710 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO.LTD - Appellant(s)
Versus
USHABEN SURESHCHANDRA SHAH & 7 - Defendant(s)

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Appearance :

MR ADIL MIRZA for Appellant,
MRS VIJYA LAXMI for Respondent Nos.1 to 5.
None for Respondent No.6 though served.
MR IM PANDY ASST.GOVERNMENT PLEADER for Respondent Nos.7 & 8.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/09/2007

ORAL JUDGMENT

1. Mr.Adil Mirza, learned counsel for the appellant, Mrs.Vijya Laxmi, learned counsel for the respondent Nos.1 to 5. None for the respondent No.6 though served. Mr.I.M.

Pandya, learned Assistant Government Pleader for the respondent Nos.7 and 8.

2. The appellant – Insurance Company, being aggrieved by the award dtd.19/3/1991 passed by the Motor Accident Claims Tribunal (Auxiliary) Kheda at Nadiad in Motor Accident Claim Petition No.259 of 1984, is before this Court with a submission that in view of the findings recorded by the tribunal that the deceased was a gratuitous passenger in a vehicle owned by the State Government, wherein no person could be allowed to travel, the Insurance Company could not be held liable and even otherwise, the tribunal was unjustified in making award in sum of Rs.12,28,600=00 against the claim of Rs.9,35,000=00.

3. Mrs.Vijya Laxmi, learned counsel for the respondent Nos.1 to 5, however, submitted that these defences are not available to the Insurance Company, therefore, this Court should not interfere.

4. Mr.I.M. Pandya, learned Assistant Government Pleader for the State also supported the submissions of Mrs.Vijya Laxmi and submitted that the Insurance Company was rightly held liable.

5. As the Insurance Company is not challenging the

rashness and negligence on the part of the driver and liability of the driver and owner of the truck, it is not necessary to burden this judgment with the said detail.

6. The tribunal, in the considered opinion of this Court could not grant anything beyond the limits fixed in the claim petition. It is not the case of the claimants that they were entitled to claim in a sum of Rs.12,28,600=00 and the tribunal had awarded the claim in its entirety. The claimants had come out with a specific case and this would also be pertinent from paragraph No.3 of the judgment that the claim was confined to a sum of Rs.9,35,000=00 only. Under the circumstances, I must hold that the tribunal was unjustified in awarding a sum of Rs.12,28,600=00 in favour of the claimants. The said amount as awarded in favour of the claimants is reduced to a sum of Rs.9,35,000=00.

7. The tribunal has referred to the evidence of one Manharbhai Bhikhabhai Chauhan, administrative officer of the Insurance Company, he clearly stated before the tribunal that the truck was insured with the Insurance Company for the period between 26/9/1983 and 25/9/1984 under Exh.78. He, however, sated that in accordance with the insurance policy, no private person

could travel in the truck and the employees of the Executive Engineer only were allowed to travel in the said truck and even in case of an accident of an employee of the Executive Engineer, the liability of the Insurance Company could be limited to a sum of Rs.4,00,000=00. Contrary to this evidence, nothing has been brought on records. If the driver had allowed some person to become a gratuitous passenger and thereby committed breach of the terms and conditions of the policy, then, the Insurance Company could not be held liable to answer the award made in favour of the claimants. It is unfortunate that in a case like present, the State Government has not filed any appeal. If the officers of the State Government feel content and happy and do not file appeal in cases like this, nor they challenge the entitlement of the claimants, then, the State Government has to thank itself.

8. Taking into consideration the legal position and the terms of the policy, I hold that the claimants would be entitled to a sum of Rs.9,35,000=00 with 6% interest per annum from the date of the claim petition till realisation, but the Insurance Company would not be answerable to the award made in favour of the claimants.

9. I am told that the Insurance Company has made certain deposits with this Court / tribunal and some amount has already been invested in some securities or Fixed Deposit Receipts.

10. On an application to the Registrar General / tribunal, the Insurance Company would be entitled to receive back the said amount with the interest which might have accrued on it. If some amount has already been paid by the Insurance Company to the claimants or has been disbursed in favour of the claimants from the amount so deposited by them, then to the extent of the said amount, the Insurance Company would be entitled to recover the same from the State Government with 6% interest per annum on the said amount from the date of deposit till realisation. The claimants, however, would be entitled to recover the amount as found by this Court from the State Government with 6% interest from the date of the claim petition till realisation, subject to deduction of the amount already received by them.

11. The appeal is allowed to the aforesaid extent. No costs.

(R.S. GARG, J.)

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